



Serious Deficiency Process For Institutions

Overview

- Define key terms
- Compare/contrast old & new regs
- Describe SD process in detail
- What constitutes a SD
- Requirements for Notice of SD
- Corrective action
- Notice of Proposed Termination and Disqualification

Key Terms

- Institution
- Sponsor
- Facility
- Affiliated center
- Unaffiliated center
- Termination
- Disqualification
- The SD process



Institutions

- Refers to any organization that signs agreement with the State Agency
- Per the agreement, the Institution must assume final administrative and financial responsibility for Program Operations
- Includes:
 - Independent centers
 - Sponsors of homes and/or centers



Sponsors

- A type of Institution that signs an agreement with SA to administer CACFP in one or more facilities, specifically:
 - One or more day care homes
 - One or more unaffiliated centers
 - Two or more affiliated centers

Facilities

- Defined as any sponsored entity

-Day care home

-Sponsored center



Termination and Disqualification

- Old regulations used phrase SD loosely
 - Institution went from being SD to being placed on SD list
 - Under new and old regs, the institution always has an opportunity to take corrective action before termination.
- Termination: formal termination of an institution's agreement by the SA
 - Prior to termination, the SA will propose termination and disqualification. Under ARPA, the institution's agreement is not terminated until after it's had an opportunity to appeal.
- Disqualification: primary consequence of termination – placement on National DQ List

What is the Serious Deficiency Process?

Everything that happens after a SD is declared

- Begins with the declaration of SD
- Ends with the resolution of the SD

The SD Process (con't)

- “Resolution” occurs when
 - Institution corrects SD
 - If institution fails to correct:
 - Agreement termination (if no appeal/institution loses appeal)
 - SD finding removed (if institution wins appeal)

The SD Process – Before and After ARPA

- 1st - SD determination made by SA
- 2nd - SA sends SD notice
- 3rd - Institution has opportunity for CA

The SD Process – Before and After ARPA (con't)

- 4th - CA phase ends by:
 - Rescind the SD if fully and permanently corrected
 - Send Notice of Proposed Termination and Disqualification if not adequately corrected
- 5th - Resolution of the appeal

Appeal Timing Has Changed

- Pre ARPA
 - Appeal offered after agreement is terminated
- Post ARPA
 - Appeal is offered before agreement is terminated

Payment of valid claims continue

The Big Picture



Steps in SD Process

- 1st - SD determination
- 2nd - Notice of SD
- 3rd - Opportunity for CA
- 4th - Proposed Termination / Disqualification if CA is inadequate

What is a Serious Deficiency?

- Consistency in approach
- Frequency: how often does it occur?
 - Isolated error?
 - Systemic problem?
- Severity of the error?
 - VCA (Viability, Capability, Accountability)



What Next?

- “Serious Deficiency Notice”
 - Written notice describing the all of the institution’s deficiencies
 - Notice must identify the Responsible Principals and Responsible Individuals (RP/RI’s)
These are individuals who caused the serious deficiency



SD Notice (con't)

- SD determination not subject to appeal
- Inadequate CA by deadline =
 - proposed termination of agreement
 - proposed disqualification
- Status of program payments during CA
- Voluntary termination = disqualification

Notices Must Be Complete!

- All pertinent SDs
- Cross reference supporting documents



Who Gets the Notice?

- Executive Director
- Board Chair
- If no Board Chair, then equivalent individual
 - Person who signs application
 - Supervisor/Dep't head (public entities)
 - Owner (for-profits)

Who Is Responsible?

- Responsible principals and responsible individuals (RPs and RIs)
 - SA must always determine RP/RIs
 - Must be identified in SD Notice
 - May/may not be principals
 - Those identified as RP/RIs will be proposed for DQ if inadequate CA

Who is a Principal?

- Managers
- Officers
- Board members



Not ALL Principals are RPs

Result of their action or inaction that led to
the SD

Responsible Individuals

- Employees
- Contractors
- Volunteers, unpaid family members



What Else Must Be Done?

- Copy of SD Notice to FNSRO
- Place institution on the SA list



The State Agency List

- All institutions declared SD in their State
- All RPs/RIs referred to FNS
 - Effective internal management tool
 - Congressional interest: relating to specific trends resulting from implementation of ARPA

Corrective Action

- SD Notice must specify the outcomes needed to correct the SD and the deadline
- Regs set maximum timeframes for CA

Timeframes for CA

- ≤ 90 days—most SDs
- > 90 days—SDs involving management systems or processes
- ≤ 30 days—SDs involving unlawful practices

CA When Up to 90 Days

- Training
- Monitoring
- Certain recordkeeping problems
- Some performance standards problems



CA □ When Over 90 Days

- Long-term changes to management systems or processes
 - Computer system changes
 - Certain personnel
- Must have CA plan
 - Within 90 days
 - Completion date and milestones for completing specific tasks

CA □ When Up to 30 Days

- Unlawful practices
 - False or fraudulent claims
 - False information on application
 - Concealed past performance problems

30 Days From When?

- New definition of “Notice”
- Receipt =
 - Certified mail/return delivery
 - Equivalent private mail service delivery
 - Date sent, for fax or email
 - If undeliverable, 5 days after sending

Is the SD “Fully and Permanently” Corrected?

- Review documentation
- Onsite review



Is There Always a
Chance for CA?



Loose Ends on CA

- What happens to the SD during CA?
 - Remains in place until CA is completed
- CA plans required for long-term changes
 - But may be used in other cases
- What if same problem found on future reviews?
 - Response depends on various factors

Promise to do better is NEVER adequate CA

Resolution of CA: SD is Corrected

- Rescind SD determination
 - Copy to FNSRO
 - Update SA list



Resolution of CA: SD is **Not** Corrected

- Notice of Proposed Termination/DQ
- Send to
 - Executive Director
 - Board Chair
 - RP/RIs
 - Copy to FNSRO
 - Update SA list



Notice of Proposed Termination/DQ

- Propose to terminate institution's agreement
- Propose to disqualify institution & RP/RIs
- Basis for SAs actions = inadequate CA
- Procedures for appeal
- Program payments during appeal
- Voluntary termination = disqualification

What Happens If the Institution Fails to Appeal?

- Notice of Termination & Disqualification
- Send to
 - Executive Director
 - Board Chair
 - RP/RIs
- Copy to FNSRO
- Update SA list



Termination/DQ Notice

- Date agreement will be terminated
- Institution & RP/RIs disqualified and on National DQ List
- Basis for SA action = no timely appeal/SA won appeal

Status of Program Payments

- General rule: Participation, including payments, continues during the SD process
- Two exceptions
 - New institutions declared seriously deficient
 - Suspended institutions
- SAs must always deny invalid claims

Why Does Rule Have New SDs?

- Changes in the Program
- Common SDs found in audits
- Changes in ARPA

Why 3 Different SD Lists?

- Different times for SD determinations
 - Reviewing new institutions' applications
 - Reviewing renewing institutions' applications
 - Other times for participating institutions

SDs for New Institutions

- Submission of false information
- Any other action affecting the ability to administer the Program

SDs for Renewing Institutions

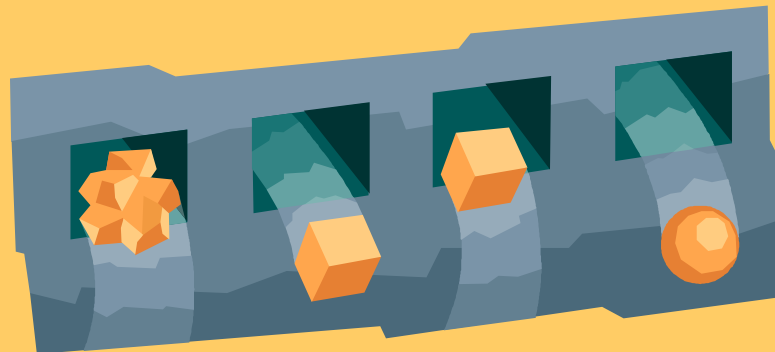
- Non-renewal triggers appeal rights, Program payments continue
- Old agreement must be extended; previous budget and management plan are in effect



Serious Deficiency Process for Providers

Overview

- Comparison
 - Similarities
 - Differences



Overview

Steps in the Process

- SD determination
- SD Notice
- Opportunity for CA
- Proposed termination/disqualification

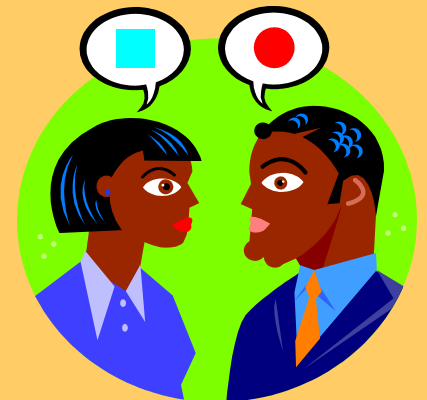
Similarities

- Post-appeal termination
- Opportunity for CA



Differences

- Termination for cause and termination for convenience
- Fewer SDs for providers
- Shorter CA period—up to 30 days
- Streamlined appeal procedures



Termination for Cause & Termination for Convenience

- Termination for Cause = due to home's violation of the agreement
 - Sponsor initiates
- Termination for Convenience = due to considerations unrelated to either party's performance or Program responsibilities
 - Sponsor or home initiates

Termination for Convenience

- Primary reasons for provider:
 - Personal or financial
 - Decision to change sponsors subject to transfer limit
- Primary reason for sponsors:
 - Financial viability: Economic Factors may influence this
- No obligation to offer appeal



SDs for Providers

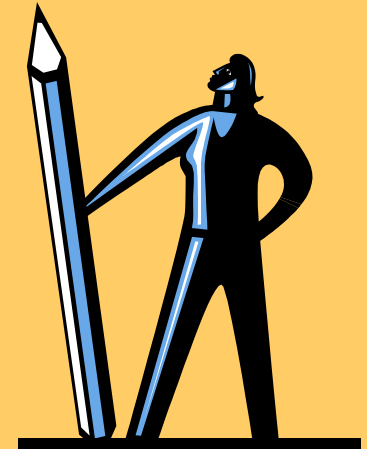
- Submission of false information
- Submission of false claims
- Simultaneous participation under > 1 sponsor
- Meal pattern non-compliance

More SDs For Providers

- Failure to keep required records
- Imminent threat to health or safety
- Conviction indicating lack of business integrity during the past 7 years
- Any other circumstance related to non-performance under agreement

Convictions Indicating a Lack of Business Integrity

- Past 7 years
- Criminal convictions only



Sponsor Discretion

- Distinguish between:
 - Occasional errors and systemic errors
 - Minor errors and major errors
- Improper use of termination for convenience = SD



Error or SD: Recap

Factors to consider:

- Frequency of the error
- Severity of the error
- Length of program experience
- Literacy level or English proficiency

Provider must move to full compliance ASAP

What Next?

Immediately prepare SD Notice



SD Notice

- Describe the SDs
- Specific CA with the deadline
- SD determination not subject to appeal
- Inadequate CA = proposed termination/DQ
- Status of program payments during CA
- Voluntary termination = disqualification

Timeframes for CA

≤ 30 days : *There are no regulatory provisions allowing Sponsors to give Providers additional time.*

- Ensure prompt resolution
- SDs are fundamental to program integrity
 - Are reimbursable meals being served?
 - Are accurate meal counts being submitted?

Opportunity for CA

Yes, except...

No corrective action allowed before
suspension for imminent threat to health or
safety



False or Fraudulent Claims

- No provision to suspend provider participation
- Opportunity to correct



False or Fraudulent Claims (con't)

- Declare the provider seriously deficient
- Opportunity for CA
- Deny the claim/recover payment
 - Never reimburse providers for invalid claims
 - Do not reimburse for invalid portion of claim

An Example of False or Fraudulent Claims

- Four enrollment forms, three children in care.
- Claiming 5-7 children for 3 months
- No explanation
- SD declared
- While CA and appeal occur, the invalid portion of the provider's claims must not be paid.

Verifying Corrective Action

- Unannounced follow-up review recommended
- SAs may establish guidelines for verifying CA



What Happens Next?

- If SD is corrected
 - Notify provider & SA
- If SD is not corrected
 - Notice of Proposed Termination/DQ to provider & SA

Notice of Proposed Termination/DQ

- Propose to terminate agreement for cause
- Propose to disqualify provider
- Basis for SA actions = inadequate CA
- Procedures for appeal
- Status of program payments
- Voluntary termination = disqualification

Termination of the Agreement



- Provider fails to appeal
- Hearing official rules in favor of sponsor

Status of Program Payments

- General rule: Program participation, including Program payments, continues during the SD process
- One exception
 - Suspended providers
- Sponsors must always deny invalid claims

Summary

- Process is similar
 - Sponsors must use judgment
 - Many features of notice the same
- Detail differences
 - Timeframe CA
 - Cause vs. convenience

